

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 90.631)
Of The Commission's Rules To)
Eliminate The Trunked System)
Five-Year Loading Requirement)

To: The Commission

COMMENTS OF MORRIS COMMUNICATIONS, INC.

Morris Communications, Inc. ("Morris Communications"), pursuant to Section 1.415(b) of the Commission's Rules, hereby submits its Comments in the captioned proceeding.

On October 29, 1993, the American Mobile Telecommunications Association, Inc. ("AMTA") submitted a Petition for Rule Making ("Petition") requesting "the initiation of a rule making proceeding to eliminate Section 90.631(b) of the Commission's Rules regarding the five-year trunked loading requirement for both 800 MHz and 900 MHz systems" (Petition at p.1).

Although the Petition requests elimination of five-year trunked loading standards, it supports the "forty mile rule" requiring full loading before expansion within forty miles (as amended by AMTA's pending rural multi-site Petition for Rule Making). (Petition at n.1). "AMTA also supports a continued preference for fully loaded systems in all channel recovery programs." Id.

I. INTEREST OF MORRIS COMMUNICATIONS

Morris Communications operates specialized mobile radio ("SMR") and paging systems in the states of Georgia, North

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Carolina and South Carolina, primarily in markets that no longer have available additional SMR frequencies, and are on the Commission's wait-list. Morris Communications would be affected in a tangible and material way by the outcome of this rule making proceeding, since grant of the relief requested likely would impair the company's ability to expand its existing loaded SMR service.

II. GRANT OF THE RELIEF REQUESTED BY AMTA WOULD DISCRIMINATE AGAINST FULLY LOADED STAND-ALONE SMR LICENSEES, WHILE REWARDING SPECTRUM SPECULATORS

The Commission does not treat all applicants for SMR spectrum uniformly. Grant of the relief requested by the Petition would only exacerbate differential treatment. Grant of AMTA's Petition would have the perverse effect of penalizing single-station SMR licensees who followed FCC procedure by fully loading their systems before expanding, while rewarding speculators in unloaded wide-area systems. Such a result contradicts the ordinary expectation that the FCC should reward licensees for following established agency policy.

Section 90.627(b) of the Commission's Rules requires that no SMR licensee may be authorized for additional SMR channels within forty miles of its existing trunked system until the currently licensed frequencies are loaded to 70 units per channel (hereinafter, "the forty mile rule"). Therefore, in order to get access to additional SMR spectrum, the ordinary single-station SMR licensee must first invest considerable

capital, time and effort in loading his system, thereby demonstrating that he operates a viable service.

By contrast, applicants for wide-area systems are able to "gobble up" large amounts of SMR spectrum merely by filing applications, and appropriate rule waiver requests. Essentially, the Commission gives out call options on spectrum by granting five-year construction waivers to wide-area applicants. As a result, the wide-area applicant ties up large amounts of spectrum at little personal risk. The wide-area applicant can build what he sees fit, and at the end of five years, he gives up the spectrum he has not constructed and placed into operation. This risk-free call option on spectrum, paid for with nominal investments of capital and time, contrasts sharply with the substantial investments required of the single-station licensee subject to the forty mile rule.

The Commission should level the playing field between the wide-area licensees, and the single market licensees, by requiring performance bonds to guarantee construction by wide-area licensees, or by imposing monetary forfeitures for non-construction of wide-area systems. Without such a mechanism, wide-area licensees suffer no loss for failing to construct, while withholding from public use valuable spectrum for five years, or longer. The opportunity cost to the public would be enormous for such risk-free warehousing. Wide-area systems require a larger commitment of public spectrum resources, in

terms of the amount of spectrum (i.e., number of channels), geographic coverage of the spectrum (wide-area vs. single market), and lengthy period before non-constructed channels are reclaimed (five years vs. one year for single market systems). Therefore, some sort of insurance that spectrum licensed for wide-area systems is actually used would serve the public interest.

Grant of AMTA's Petition, and elimination of all five-year loading standards for trunked systems would only exacerbate this differential treatment, by "drying up" a source of additional spectrum for expansion by single-station licensees. Elimination of loading standards would impair recovery of frequencies. Impaired recovery of SMR channels would, in turn, reduce or eliminate redistribution of scarce SMR spectrum, particularly in wait-listed markets, thereby eliminating the source of spectrum for expansion by the single-station SMR licensee.

Grant of the AMTA Petition would have the perverse result that the fully loaded SMR operator would be unable to get more spectrum for expansion, while wide-area system speculators are sitting on large amounts of spectrum for five or more years, free to construct, or not, as their business considerations dictate.

This contrary result contradicts ordinary expectations that an agency would reward licensees fulfilling published agency policy. It would be expected that licensees

constructing and fully loading a system would be rewarded with access to additional spectrum. This contrary result also flies in the face of Commission policy to establish the SMR services as a small business opportunity.

III. THE FIVE YEAR LOADING REQUIREMENT SHOULD BE ENFORCED IN FAVOR OF FULLY LOADED SMR LICENSEES

Even if it decides to drop the five year loading requirement generally, the Commission should continue to enforce the loading requirement where a fully loaded existing SMR system desires additional frequencies.

AMTA's Petition is premised on an assumption that in many areas, there are not enough customers to support fully loaded channels on several competing SMR systems. Therefore, rather than recover these channels, and recycle them to new licensees, who in turn could not fully load them either, it would be more efficient to leave the channels in the hands of established SMR operators who have been serving the community.

Alternatively, AMTA's Petition is premised on the assumption that SMR systems providing primarily interconnected service cannot load as many customers as systems providing primarily dispatch service, since interconnected calls take more time than dispatch. Since SMR service now is being positioned to compete with cellular and PCS, it may fulfill the public interest to encourage interconnected service.

Both premises must give way to awarding additional spectrum to a fully loaded SMR system. The first premise

simply does not apply where an SMR system is fully loaded, since it is self-evident that the market can support at least one set of SMR frequencies that are fully loaded. Similarly, the second premise should not be applied, since any fully loaded system, regardless of whether it provides dispatch or interconnected service, should be given expansion preference over an experimental system.

Finally, the Petition suggests that recovery of underloaded channels would be ineffective due to extensive short-spacing, and FCC reassignment exclusively on a seventy mile basis. (Petition at p.9). However, there is nothing preventing the Commission from recovering the underloaded short-spaced frequency, and reassigning on less than a seventy mile basis. Insistence on reassignment solely on seventy mile separations is an arbitrary rule.

WHEREFORE, Morris Communications respectfully requests that the five year loading requirements for trunked systems be retained, or alternatively that the requirement be enforced, at a minimum, where a fully loaded SMR licensee has requested additional spectrum.

Respectfully submitted,

MORRIS COMMUNICATIONS, INC.



H. A. Morris, Jr.
Chairman

Filed: December 15, 1993